the contract thereby became void. It is submitted that that case is distinguishable from the principal case in that it would apparently not be illegal for the defendant in the principal case to file and abide by the schedule fixed by the state.

CONSTITUTIONAL LAW—REQUIRING CARRIERS TO GRANT FREE TRANSPORTATION TO POLICE.—Defendant was convicted of assault and battery upon a member of the police force of Jersey City, and justified upon the ground that the latter was lawfully ejected by defendant, acting as servant of the street railway company, for refusal to pay fare. This defense was met by the act of 1912 requiring street railways to grant free transportation of uniformed public officers while engaged in the performance of their duties and of detectives whose duties require police duty to be performed without uniform. There was no question that the policeman came within the provisions of the act, but its constitutionality is questioned because it is said to take the railroad's property without compensation. *Held* that the law is constitutional. *State* v. *Sutton* (N. J. 1912), 84 Atl. 1057.

In *Wilson* v. *United Traction Co.* 72 App. Div. 233, 76 N. Y. Supp. 203 the court held a statute providing for the riding of policemen and firemen without charge on street railroads unconstitutional, saying "The only advantage secured by the act to the public is that the railroad company instead of the municipality pays the fare. Such an advantage may be a public convenience, but the right to take the property of the individual citizen or of a class for the sole reason that the proceeds of it would be convenient to aid the municipality in defraying its general expenses, has not yet been conceded as a legitimate exercise of the police power, and we are not disposed to concede it now." An act requiring the transportation of school children at half fare—less than cost—was held constitutional in *Interstate Consolidated Ry. Co.* v. *Massachusetts,* 207 U. S. 79, 28 Sup. Ct. 26, 52 L. Ed. 111. But in the latter case it was said; "A majority of the court considers that the case is disposed of by the fact that the statute in question was in force when he plaintiff in error took its charter, and confines itself to that ground." In the principal case the court based its opinion on the following grounds: (1) the company did really receive some indirect compensation in the protection afforded by the mere presence of the officer, (2) the statute in question was a valid exercise of the police power, (3) for many years both prior and subsequent to the incorporation of the company it had been customary to carry policemen free. As to the first point it would scarcely seem to be such a compensation for the taking of private property as the law requires. The second point is sufficiently answered by the quotation from *Wilson* v. *United Traction Co., supra.* As the third, it is difficult to see why, if the custom referred to was expected to bind, it was not included in the terms of the franchise. The scarcity of decisions on this particular point is probably accounted for by the fact that such provisions have generally been expressed in the franchise or in statutes in force at the time of granting the franchise.

CONTRACT OF INFANT—DUTY TO RETURN CONSIDERATION UPON DISAFFIRMANCE.—Plaintiff purchased hay from the defendant, who was an infant en-

gaged in the hay and straw business, and paid for the same with a cheque. The infant failed to perform his part of the contract, and never delivered the hay. The plaintiff brought an action for damages for breach of the contract, or in the alternative for money had and received. Defendant pleaded infancy as a defense. *Held,* Plaintiff could not recover the consideration paid, unless able to show that his action was in substance *ex delicto* by proving fraud on the part of the defendant. *Cowern* v. *Nield,* (1912) 2 K. B 419.

The principal case represents the line of decision on this point to be followed in the English courts. A different conclusion would probably be reached in most of the courts of this country. A trading contract of an infant is voidable at the infant's election, "when he repudiates the contract, however, he no longer has any right to the consideration which he has received: and if he still has it, the other party may maintain an action to recover it." TIFFANY, PERSONS & DOMESTIC RELATIONS, § 418. Where the consideration is other than money, replevin will lie. *Badger* v. *Phinney,* 15 Mass. 359, 8 Am. Dec. 105: *Commission Co.* v *.Smith,* 86 Mo. App. 490. Equity will refuse to lend its aid to disaffirmance, unless the infant returns all of the consideration which he still has. *Stull* v. *Harris,* 51 Ark. 294; *Strain* v. *Wright,* 7 Ga. 568. Disaffirmance will not be allowed in an action against the infant on the contract, unless the consideration is returned, or a showing is made that it is not within the power of the infant to return it, e. g. that he has squandered the entire consideration. *Hall* v. *Butterfield,* 59 N. H. 354; *Bartlett* v. *Bailey,* 59 N. H. 408; *Dickerson* v. *Gordon,* 5 N. Y. Supp. 310. The facts of the case last cited are almost identical with those of the principal case. It seems that the English court loses sight of the maxim, which the American cases apply, viz: "The plea of infancy is to be used as a shield, not as a sword." See also, 8 MICH. L. REV. 65; 26 L. R. A., 177, note.

CORPORATIONS—EFFECT OF CORPORATION'S INSOLVENCY ON THE RIGHT TO RESCIND A PURCHASE OF STOCK.—Petitioner alleges that he was induced by the fraudulent representations of the officers and agents of defendant bank to purchase 100 shares of its capital stock; that he did not learn of the insolvent condition of the bank until it was adjudged insolvent and a receiver was appointed, sixteen months after the purchase; and that the officers of the bank had repeatedly, and up to the time the doors of the bank were closed, made to petitioner representations of the flourishing conditions of the bank, Defendant demurred. *Held,* that the demurrer should have been overruled; that the mere insolvency of the incorporation and the appointment of a receiver do not themselves bar petitioner's right to a rescission, and that the complaint does not show such laches on the part of petitioner as should bar a recovery. *People* v. *California Safe Deposit & Trust Co. et al.* (Cal. 1912) 126 Pac. 516.

It is the settled law in England that a stock subscription cannot on the ground of fraud, be repudiated after the incorporation has been insolvent, and has made an assignment or gone into the hands of a receiver or assignee in bankruptcy, even though the fraud may not have been discovered before